

114TH CONGRESS
1ST SESSION

H. R. 1734

To amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2015

Mr. MCKINLEY (for himself, Mr. CRAMER, Mr. GUTHRIE, Mr. MURPHY of Pennsylvania, Mr. RODNEY DAVIS of Illinois, Mr. WHITFIELD, Mr. HUIZENGA of Michigan, Mr. HARPER, Mr. FRANKS of Arizona, Mr. BARR, Mr. OLSON, Mr. KELLY of Pennsylvania, Mr. RENACCI, Mr. THOMPSON of Mississippi, Mr. SHIMKUS, Mr. BARLETTA, Ms. JENKINS of Kansas, Mr. BISHOP of Georgia, Mr. JENKINS of West Virginia, Mrs. LUMMIS, Mr. LONG, Mrs. BLACKBURN, and Mr. MOONEY of West Virginia) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Improving Coal Combustion Residuals Regulation Act of
4 2015”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Management and disposal of coal combustion residuals.

Sec. 3. 2000 regulatory determination.

Sec. 4. Technical assistance.

Sec. 5. Federal Power Act.

7 **SEC. 2. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.**

9 (a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding
10 at the end the following:

12 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.**

14 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.—Each State may adopt, implement,
15 and enforce a coal combustion residuals permit program
16 in accordance with this section.

18 “(b) STATE ACTIONS.—

19 “(1) NOTIFICATION.—Not later than 6 months
20 after the date of enactment of this section (except
21 as provided by the deadline identified under sub-
22 section (d)(3)(B)), the Governor of each State shall
23 notify the Administrator, in writing, whether such

1 State will adopt and implement a coal combustion
2 residuals permit program.

3 “(2) CERTIFICATION.—

4 “(A) IN GENERAL.—Not later than 24
5 months after the date of enactment of this sec-
6 tion (except as provided in subparagraph (B)
7 and subsection (f)(1)(A)), in the case of a State
8 that has notified the Administrator that it will
9 implement a coal combustion residuals permit
10 program, the head of the lead State imple-
11 menting agency shall submit to the Adminis-
12 trator a certification that such coal combustion
13 residuals permit program meets the require-
14 ments described in subsection (c).

15 “(B) EXTENSION.—

16 “(i) REQUIREMENTS.—The Adminis-
17 trator may extend the deadline for submis-
18 sion of a certification for a State under
19 subparagraph (A) for a period of 12
20 months if the State submits to the Adminis-
21 trator a request for such an extension
22 that—

23 “(I) describes the efforts of the
24 State to meet such deadline;

1 “(II) demonstrates that the legis-
2 lative or rulemaking procedures of
3 such State render the State unable
4 meet such deadline; and

5 “(III) provides the Administrator
6 with a detailed schedule for comple-
7 tion and submission of the certifi-
8 cation.

9 “(ii) DETERMINATION.—If the Ad-
10 ministrator does not approve or deny a re-
11 quest submitted under clause (i) by the
12 date that is 30 days after such submission,
13 the request shall be deemed approved.

14 “(C) CONTENTS.—A certification sub-
15 mitted under this paragraph shall include—

16 “(i) a letter identifying the lead State
17 implementing agency, signed by the head
18 of such agency;

19 “(ii) identification of any other State
20 agencies involved with the implementation
21 of the coal combustion residuals permit
22 program;

23 “(iii) an explanation of how the State
24 coal combustion residuals permit program

1 meets the requirements of this section, in-
2 cluding—

3 “(I) a description of the
4 State’s—

5 “(aa) process to inspect or
6 otherwise determine compliance
7 with such permit program;

8 “(bb) process to enforce the
9 requirements of such permit pro-
10 gram;

11 “(cc) public participation
12 process for the promulgation,
13 amendment, or repeal of regula-
14 tions for, and the issuance of
15 permits under, such permit pro-
16 gram; and

17 “(dd) statutes, regulations,
18 or policies pertaining to public
19 access to information, including
20 information on groundwater mon-
21 itoring data, structural stability
22 assessments, emergency action
23 plans, fugitive dust control plans,
24 notifications of closure (including
25 any certification of closure by a

1 qualified professional engineer),
2 and corrective action remedies;
3 and
4 “(II) identification of any
5 changes to the definitions under sec-
6 tion 257.53 of title 40, Code of Fed-
7 eral Regulations, for purposes of the
8 State coal combustion residuals per-
9 mit program, including a reasonable
10 basis for such changes, as required
11 under subsection (l)(5);
12 “(iv) a statement that the State has
13 in effect, at the time of certification, stat-
14 utes or regulations necessary to implement
15 a coal combustion residuals permit pro-
16 gram that meets the requirements de-
17 scribed in subsection (c);
18 “(v) copies of State statutes and regu-
19 lations described in clause (iv);
20 “(vi) a plan for a response by the
21 State to a release at a structure or inactive
22 surface impoundment that has the poten-
23 tial for impact beyond the site on which
24 the structure or inactive surface impound-
25 ment is located; and

1 “(vii) a plan for coordination among
2 States in the event of a release that
3 crosses State lines.

4 “(D) UPDATES.—A State may update the
5 certification as needed to reflect changes to the
6 coal combustion residuals permit program.

7 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
8 GRAM.—In order to adopt or implement a coal com-
9 bustion residuals permit program under this section
10 (including pursuant to subsection (f)), the lead State
11 implementing agency shall maintain an approved
12 permit program or other system of prior approval
13 and conditions under section 4005(c) or an author-
14 ized program under section 3006.

15 “(c) REQUIREMENTS FOR A COAL COMBUSTION RE-
16 SIDUALS PERMIT PROGRAM.—A coal combustion residuals
17 permit program shall consist of the following:

18 “(1) GENERAL REQUIREMENTS.—

19 “(A) PERMITS.—The implementing agency
20 shall require that owners or operators of struc-
21 tures apply for and obtain permits incor-
22 porating the applicable requirements of the coal
23 combustion residuals permit program.

24 “(B) PUBLIC AVAILABILITY OF INFORMA-
25 TION.—Except for information with respect to

1 which disclosure is prohibited under section
2 1905 of title 18, United States Code, the imple-
3 menting agency shall ensure that—

4 “(i) documents for permit determina-
5 tions are made publicly available for review
6 and comment under the public participa-
7 tion process of the coal combustion residu-
8 als permit program;

9 “(ii) final determinations on permit
10 applications are made publicly available;

11 “(iii) information on groundwater
12 monitoring data, structural stability as-
13 sessments, emergency action plans, fugitive
14 dust control plans, notifications of closure
15 (including any certification of closure by a
16 qualified professional engineer), and cor-
17 rective action remedies required pursuant
18 to paragraph (2), collected in a manner de-
19 termined appropriate by the implementing
20 agency, is publicly available, including on
21 an Internet website; and

22 “(iv) information regarding the exer-
23 cise by the implementing agency of any
24 discretionary authority granted under this
25 section and not provided for in the rule de-

1 scribed in subsection (l)(1) is made pub-
2 licly available.

3 “(C) AGENCY AUTHORITY.—

4 “(i) IN GENERAL.—The implementing
5 agency shall—

6 “(I) obtain information necessary
7 to determine whether the owner or op-
8 erator of a structure is in compliance
9 with the requirements of the coal com-
10 bustion residuals permit program;

11 “(II) conduct or require moni-
12 toring or testing to ensure that struc-
13 tures are in compliance with the re-
14 quirements of the coal combustion re-
15 siduals permit program; and

16 “(III) enter any site or premise
17 at which a structure or inactive coal
18 combustion residuals surface im-
19 poundment is located for the purpose
20 of inspecting such structure or surface
21 impoundment and reviewing relevant
22 records.

23 “(ii) MONITORING AND TESTING.—If
24 monitoring or testing is conducted under
25 clause (i)(II) by or for the implementing

1 agency, the implementing agency shall, if
2 requested, provide to the owner or oper-
3 ator—

4 “(I) a written description of the
5 monitoring or testing completed;

6 “(II) at the time of sampling, a
7 portion of each sample equal in vol-
8 ume or weight to the portion retained
9 by or for the implementing agency;
10 and

11 “(III) a copy of the results of
12 any analysis of samples collected by or
13 for the implementing agency.

14 “(2) CRITERIA.—The implementing agency
15 shall apply the following criteria with respect to
16 structures:

17 “(A) DESIGN REQUIREMENTS.—For new
18 structures, including lateral expansions of exist-
19 ing structures, the criteria regarding design re-
20 quirements described in sections 257.70 and
21 257.72 of title 40, Code of Federal Regulations,
22 as applicable.

23 “(B) GROUNDWATER MONITORING AND
24 CORRECTIVE ACTION.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), for all structures, the
3 criteria regarding groundwater monitoring
4 and corrective action requirements de-
5 scribed in sections 257.90 through 257.98
6 of title 40, Code of Federal Regulations,
7 including—

8 “(I) for the purposes of detection
9 monitoring, the constituents described
10 in appendix III to part 257 of title
11 40, Code of Federal Regulations; and

12 “(II) for the purposes of assess-
13 ment monitoring, establishing a
14 groundwater protection standard, and
15 assessment of corrective measures, the
16 constituents described in appendix IV
17 to part 257 of title 40, Code of Fed-
18 eral Regulations.

19 “(ii) EXCEPTIONS AND ADDITIONAL
20 AUTHORITY.—

21 “(I) ALTERNATIVE POINT OF
22 COMPLIANCE.—Notwithstanding sec-
23 tion 257.91(a)(2) of title 40, Code of
24 Federal Regulations, the imple-
25 menting agency may establish the rel-

1 event point of compliance for the
2 down-gradient monitoring system as
3 provided in section 258.51(a)(2) of
4 title 40, Code of Federal Regulations.

5 “(II) ALTERNATIVE GROUND-
6 WATER PROTECTION STANDARDS.—
7 Notwithstanding section 257.95(h) of
8 title 40, Code of Federal Regulations,
9 the implementing agency may estab-
10 lish an alternative groundwater pro-
11 tection standard as provided in section
12 258.55(i) of title 40, Code of Federal
13 Regulations.

14 “(III) ABILITY TO DETERMINE
15 THAT CORRECTIVE ACTION IS NOT
16 NECESSARY OR TECHNICALLY FEA-
17 SIBLE.—Notwithstanding section
18 257.97 of title 40, Code of Federal
19 Regulations, the implementing agency
20 may determine that remediation of a
21 release from a structure is not nec-
22 essary as provided in section
23 258.57(e) of title 40, Code of Federal
24 Regulations.

1 “(IV) AUTHORITY RELATING TO
2 RELEASES, OTHER THAN RELEASES
3 TO GROUNDWATER.—Notwithstanding
4 sections 257.90(d) and 257.96(a) of
5 title 40, Code of Federal Regulations,
6 the implementing agency may, with
7 respect to a release from a structure,
8 other than a release to groundwater,
9 authorize, for purposes of complying
10 with this section, remediation of such
11 release in accordance with other appli-
12 cable Federal or State requirements if
13 compliance with such requirements
14 will result in the same level of protec-
15 tion as compliance with the criteria
16 described in sections 257.96 through
17 257.98 of title 40, Code of Federal
18 Regulations, taking into consideration
19 the nature of the release.

20 “(V) GENERAL AUTHORITY RE-
21 LATING TO GROUNDWATER MONI-
22 TORING AND CORRECTIVE ACTION.—
23 Notwithstanding sections 257.90
24 through 257.98 of title 40, Code of
25 Federal Regulations, the imple-

18 “(aa) to continue to operate,
19 pursuant to sections 257.96
20 through 257.98 of title 40, Code
21 of Federal Regulations, until the
22 date that is 102 months after the
23 date of enactment of this section;
24 and

1 “(bb) to continue to operate
2 after such date as long as such
3 unlined surface impoundment
4 meets the groundwater protection
5 standard established pursuant to
6 this subparagraph and any other
7 applicable requirement estab-
8 lished pursuant to this section.

9 “(C) CLOSURE.—For all structures, the
10 criteria for closure described in sections
11 257.101, 257.102, and 257.103 of title 40,
12 Code of Federal Regulations, except—

13 “(i) the criteria described in section
14 257.101(a)(1) of title 40, Code of Federal
15 Regulations, shall apply to an existing
16 structure that is an unlined surface im-
17 poundment only if—

18 “(I) the unlined surface im-
19 poundment is not allowed to continue
20 operation pursuant to subparagraph
21 (B)(ii)(VI)(aa); or

22 “(II) in the case of an unlined
23 surface impoundment that is allowed
24 to continue operation pursuant to sub-
25 paragraph (B)(ii)(VI)(aa), the date

1 described in such subparagraph has
2 passed and the unlined surface im-
3 poundment does not meet the require-
4 ments described in subparagraph
5 (B)(ii)(VI)(bb);
6 “(ii) the criteria described in section
7 257.101(b)(1) of title 40, Code of Federal
8 Regulations, shall not apply to existing
9 structures, except as provided in subpara-
10 graphs (E)(i)(II) and (E)(ii); and
11 “(iii) if an implementing agency has
12 set a deadline under clause (i) or (ii) of
13 subparagraph (L), the criteria described in
14 section 257.101(b)(2) of title 40, Code of
15 Federal Regulations, shall apply to struc-
16 tures that are surface impoundments only
17 after such deadline.

18 “(D) POST-CLOSURE.—For all structures,
19 the criteria for post-closure care described in
20 section 257.104 of title 40, Code of Federal
21 Regulations.

22 “(E) LOCATION RESTRICTIONS.—

23 “(i) IN GENERAL.—The criteria for
24 location restrictions described in—

1 “(I) for new structures, including
2 lateral expansions of existing struc-
3 tures, sections 257.60 through 257.64
4 and 257.3–1 of title 40, Code of Fed-
5 eral Regulations; and

6 “(II) for existing structures, sec-
7 tions 257.64 and 257.3–1 of title 40,
8 Code of Federal Regulations.

9 “(ii) ADDITIONAL AUTHORITY.—The
10 implementing agency may apply the cri-
11 teria described in sections 257.60 through
12 257.63 of title 40, Code of Federal Regula-
13 tions, to existing structures that are sur-
14 face impoundments.

15 “(F) AIR CRITERIA.—For all structures,
16 the criteria for air quality described in section
17 257.80 of title 40, Code of Federal Regulations.

18 “(G) FINANCIAL ASSURANCE.—For all
19 structures, the criteria for financial assurance
20 described in subpart G of part 258 of title 40,
21 Code of Federal Regulations.

22 “(H) SURFACE WATER.—For all struc-
23 tures, the criteria for surface water described in
24 section 257.3–3 of title 40, Code of Federal
25 Regulations.

1 “(I) RECORDKEEPING.—For all structures,
2 the criteria for recordkeeping described in sec-
3 tion 257.105 of title 40, Code of Federal Regu-
4 lations.

5 “(J) RUN-ON AND RUN-OFF CONTROLS.—
6 For all structures that are landfills, sand or
7 gravel pits, or quarries, the criteria for run-on
8 and run-off control described in section 257.81
9 of title 40, Code of Federal Regulations.

10 “(K) HYDROLOGIC AND HYDRAULIC CA-
11 PACITY REQUIREMENTS.—For all structures
12 that are surface impoundments, the criteria for
13 inflow design flood control systems described in
14 section 257.82 of title 40, Code of Federal Reg-
15 ulations.

16 “(L) STRUCTURAL INTEGRITY.—For struc-
17 tures that are surface impoundments, the cri-
18 teria for structural integrity described in sec-
19 tions 257.73 and 257.74 of title 40, Code of
20 Federal Regulations, except that, notwith-
21 standing section 257.73(f)(4) of title 40, Code
22 of Federal Regulations, the implementing agen-
23 cy may provide for—

24 “(i) up to 30 days for an owner or op-
25 erator to complete a safety factor assess-

1 ment when an owner or operator has failed
2 to meet an applicable periodic assessment
3 deadline provided in section 257.73(f) of
4 title 40, Code of Federal Regulations; and
5 “(ii) up to 12 months for an owner or
6 operator to meet the safety factor assess-
7 ment criteria provided in section
8 257.73(e)(1) of title 40, Code of Federal
9 Regulations, if the implementing agency
10 determines, through the initial safety fac-
11 tor assessment, that the structure does not
12 meet such safety factor assessment criteria
13 and that the structure does not pose an
14 immediate threat of release.

15 “(M) INSPECTIONS.—For all structures,
16 the criteria described in sections 257.83 and
17 257.84 of title 40, Code of Federal Regulations.

18 “(3) PERMIT PROGRAM IMPLEMENTATION FOR
19 EXISTING STRUCTURES.—

20 “(A) NOTIFICATION.—Not later than the
21 date on which a State submits a certification
22 under subsection (b)(2), not later than 18
23 months after the Administrator receives notice
24 under subsection (e)(1)(A), or not later than 24
25 months after the date of enactment of this sec-

1 tion with respect to a coal combustion residuals
2 permit program that is being implemented by
3 the Administrator under subsection (e)(3), as
4 applicable, the implementing agency shall notify
5 owners or operators of existing structures of—

6 “(i) the obligation to apply for and
7 obtain a permit under subparagraph (C);
8 and

9 “(ii) the requirements referred to in
10 subparagraph (B)(ii).

11 “(B) COMPLIANCE WITH CERTAIN RE-
12 QUIREMENTS.—

13 “(i) INITIAL DEADLINE FOR CERTAIN
14 REQUIREMENTS.—Not later than 8 months
15 after the date of enactment of this section,
16 the implementing agency shall require own-
17 ers or operators of existing structures to
18 comply with—

19 “(I) the requirements under
20 paragraphs (2)(F), (2)(H), (2)(I), and
21 (2)(M); and

22 “(II) the requirement for a per-
23 manent identification marker under
24 the criteria described in paragraph
25 (2)(L).

1 “(ii) SUBSEQUENT DEADLINE FOR

2 CERTAIN OTHER REQUIREMENTS.—Not
3 later than 12 months after the date on
4 which a State submits a certification under
5 subsection (b)(2), not later than 30
6 months after the Administrator receives
7 notice under subsection (e)(1)(A), or not
8 later than 36 months after the date of en-
9 actment of this section with respect to a
10 coal combustion residuals permit program
11 that is being implemented by the Adminis-
12 trator under subsection (e)(3), as applica-
13 ble, the implementing agency shall require
14 owners or operators of existing structures
15 to comply with—

16 “(I) the requirements under
17 paragraphs (2)(B), (2)(G), (2)(J),
18 (2)(K), and (2)(L); and

19 “(II) the requirement for a writ-
20 ten closure plan under the criteria de-
21 scribed in paragraph (2)(C).

22 “(C) PERMITS.—

23 “(i) PERMIT DEADLINE.—Not later
24 than 48 months after the date on which a
25 State submits a certification under sub-

1 section (b)(2), not later than 66 months
2 after the Administrator receives notice
3 under subsection (e)(1)(A), or not later
4 than 72 months after the date of enact-
5 ment of this section with respect to a coal
6 combustion residuals permit program that
7 is being implemented by the Administrator
8 under subsection (e)(3), as applicable, the
9 implementing agency shall issue, with re-
10 spect to an existing structure, a final per-
11 mit incorporating the applicable require-
12 ments of the coal combustion residuals per-
13 mit program, or a final denial of an appli-
14 cation submitted requesting such a permit.

15 “(ii) APPLICATION DEADLINE.—The
16 implementing agency shall identify, in col-
17 laboration with the owner or operator of an
18 existing structure, a reasonable deadline by
19 which the owner or operator shall submit a
20 permit application under clause (i).

21 “(D) INTERIM OPERATION.—

22 “(i) PRIOR TO DEADLINES.—Unless
23 the implementing agency determines that
24 the structure should close in accordance
25 with the criteria described in paragraph

(2)(C), with respect to any period of time on or after the date of enactment of this section but prior to the applicable deadline in subparagraph (B), the owner or operator of an existing structure may continue to operate such structure until such applicable deadline under any applicable regulations in effect during such period.

“(ii) PRIOR TO PERMIT.—Unless the implementing agency determines that the structure should close in accordance with the criteria described in paragraph (2)(C), if the owner or operator of an existing structure meets the requirements referred to in subparagraph (B) by the applicable deadline in such subparagraph, the owner or operator may operate the structure until such time as the implementing agency issues, under subparagraph (C), a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial of an application submitted requesting such a permit.

24 “(4) REQUIREMENTS FOR INACTIVE COAL COM-
25 BUSTION RESIDUALS SURFACE IMPOUNDMENTS.—

1 “(A) NOTICE.—Not later than 2 months
2 after the date of enactment of this section, each
3 owner or operator of an inactive coal combus-
4 tion residuals surface impoundment shall sub-
5 mit to the Administrator and the State in which
6 such inactive coal combustion residuals surface
7 impoundment is located a notice stating whether
8 such inactive coal combustion residuals sur-
9 face impoundment will—

10 “(i) not later than 3 years after the
11 date of enactment of this section, complete
12 closure in accordance with section 257.100
13 of title 40, Code of Federal Regulations; or

14 “(ii) comply with the requirements of
15 the coal combustion residuals permit pro-
16 gram applicable to existing structures that
17 are surface impoundments (except as pro-
18 vided in subparagraph (D)(ii)).

19 “(B) EXTENSION.—In the case of an inac-
20 tive coal combustion residuals surface impound-
21 ment for which the owner or operator submits
22 a notice described in subparagraph (A)(i), the
23 implementing agency may extend the closure
24 deadline provided in such subparagraph by a
25 period of not more than 2 years if the owner or

1 operator of such inactive coal combustion re-
2 siduals surface impoundment—

3 “(i) demonstrates to the satisfaction
4 of the implementing agency that it is not
5 feasible to complete closure of the inactive
6 coal combustion residuals surface impound-
7 ment in accordance with section 257.100
8 of title 40, Code of Federal Regulations, by
9 the deadline provided in subparagraph
10 (A)(i)—

11 “(I) because of complications
12 stemming from the climate or weath-
13 er, such as unusual amounts of pre-
14 cipitation or a significantly shortened
15 construction season;

16 “(II) because additional time is
17 required to remove the liquid from the
18 inactive coal combustion residuals sur-
19 face impoundment due to the volume
20 of coal combustion residuals contained
21 in the surface impoundment or the
22 characteristics of the coal combustion
23 residuals in such surface impound-
24 ment;

1 “(III) because the geology and
2 terrain surrounding the inactive coal
3 combustion residuals surface im-
4 poundment will affect the amount of
5 material needed to close the inactive
6 coal combustion residuals surface im-
7 poundment; or

8 “(IV) because additional time is
9 required to coordinate with and obtain
10 necessary approvals and permits; and
11 “(ii) demonstrates to the satisfaction
12 of the implementing agency that the inac-
13 tive coal combustion residuals surface im-
14 poundment does not pose an immediate
15 threat of release.

16 “(C) FINANCIAL ASSURANCE.—The imple-
17 menting agency shall require the owner or oper-
18 ator of an inactive surface impoundment that
19 has closed pursuant to this paragraph to per-
20 form post-closure care in accordance with the
21 criteria described in section 257.104(b)(1) of
22 title 40, Code of Federal Regulations, and to
23 provide financial assurance for such post-clo-
24 sure care in accordance with the criteria de-

1 scribed in section 258.72 of title 40, Code of
2 Federal Regulations.

3 “(D) TREATMENT AS STRUCTURE.—

4 “(i) IN GENERAL.—An inactive coal
5 combustion residuals surface impoundment
6 shall be treated as an existing structure
7 that is a surface impoundment for the pur-
8 poses of this section, including with respect
9 to the requirements of paragraphs (1) and
10 (2), if—

11 “(I) the owner or operator does
12 not submit a notice in accordance
13 with subparagraph (A); or

14 “(II) the owner or operator sub-
15 mits a notice described in subpara-
16 graph (A)(ii).

17 “(ii) INACTIVE COAL COMBUSTION RE-
18 SIDUALS SURFACE IMPOUNDMENTS THAT
19 FAIL TO CLOSE.—An inactive coal combus-
20 tion residuals surface impoundment for
21 which the owner or operator submits a no-
22 tice described in subparagraph (A)(i) that
23 does not close by the deadline provided
24 under subparagraph (A)(i) or subpara-
25 graph (B), as applicable—

1 “(I) shall be treated as an exist-
2 ing structure for purposes of this sec-
3 tion beginning on the date that is the
4 day after such applicable deadline, in-
5 cluding by—
6 “(aa) being required to com-
7 ply with the requirements of
8 paragraph (1), as applicable; and
9 “(bb) being required to com-
10 ply, beginning on such date, with
11 each requirement of paragraph
12 (2); but
13 “(II) shall not be required to
14 comply with paragraph (3).

15 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
16 GRAMS.—

17 “(1) IN GENERAL.—The Administrator shall
18 provide to a State written notice and an opportunity
19 to remedy deficiencies in accordance with paragraph
20 (3) if at any time the State—
21 “(A) does not satisfy the notification re-
22 quirement under subsection (b)(1);
23 “(B) has not submitted a certification as
24 required under subsection (b)(2);

1 “(C) does not satisfy the maintenance re-
2 quirement under subsection (b)(3);

3 “(D) is not implementing a coal combus-
4 tion residuals permit program, with respect to
5 which the State has submitted a certification
6 under subsection (b)(2), that meets the require-
7 ments described in subsection (c);

8 “(E) is not implementing a coal combus-
9 tion residuals permit program, with respect to
10 which the State has submitted a certification
11 under subsection (b)(2)—

12 “(i) that is consistent with such cer-
13 tification; and

14 “(ii) for which the State continues to
15 have in effect statutes or regulations nec-
16 essary to implement such program; or

17 “(F) does not make available to the Ad-
18 ministrator, within 90 days of a written re-
19 quest, specific information necessary for the
20 Administrator to ascertain whether the State
21 has satisfied the requirements described in sub-
22 paragraphs (A) through (E).

23 “(2) REQUEST.—If a request described in para-
24 graph (1)(F) is proposed pursuant to a petition to
25 the Administrator, the Administrator shall make the

1 request only if the Administrator does not possess
2 the information necessary to ascertain whether the
3 State has satisfied the requirements described in
4 subparagraphs (A) through (E) of paragraph (1).

5 “(3) CONTENTS OF NOTICE; DEADLINE FOR RE-
6 SPONSE.—A notice provided under paragraph (1)
7 shall—

8 “(A) include findings of the Administrator
9 detailing any applicable deficiencies described in
10 subparagraphs (A) through (F) of paragraph
11 (1); and

12 “(B) identify, in collaboration with the
13 State, a reasonable deadline by which the State
14 shall remedy such applicable deficiencies, which
15 shall be—

16 “(i) in the case of a deficiency de-
17 scribed in subparagraphs (A) through (E)
18 of paragraph (1), not earlier than 180
19 days after the date on which the State re-
20 ceives the notice; and

21 “(ii) in the case of a deficiency de-
22 scribed in paragraph (1)(F), not later than
23 90 days after the date on which the State
24 receives the notice.

1 “(4) CONSIDERATIONS FOR DETERMINING DE-
2 FICIENCY OF STATE PERMIT PROGRAM.—In making
3 a determination whether a State has failed to satisfy
4 the requirements described in subparagraphs (A)
5 through (E) of paragraph (1), or a determination
6 under subsection (e)(1)(B), the Administrator shall
7 consider, as appropriate—

8 “(A) whether the State’s statutes or regu-
9 lations to implement a coal combustion residu-
10 als permit program are not sufficient to meet
11 the requirements described in subsection (c) be-
12 cause of—

13 “(i) failure of the State to promulgate
14 or enact new statutes or regulations when
15 necessary; or

16 “(ii) action by a State legislature or
17 court striking down or limiting such State
18 statutes or regulations;

19 “(B) whether the operation of the State
20 coal combustion residuals permit program fails
21 to comply with the requirements of subsection
22 (c) because of—

23 “(i) failure of the State to issue per-
24 mits as required in subsection (c)(1)(A);

1 “(ii) repeated issuance by the State of
2 permits that do not meet the requirements
3 of subsection (c);

4 “(iii) failure of the State to comply
5 with the public participation requirements
6 of this section; or

7 “(iv) failure of the State to implement
8 corrective action requirements required
9 under subsection (c)(2)(B); and

10 “(C) whether the enforcement of a State
11 coal combustion residuals permit program fails
12 to comply with the requirements of this section
13 because of—

14 “(i) failure to act on violations of per-
15 mits, as identified by the State; or

16 “(ii) repeated failure by the State to
17 inspect or otherwise determine compliance
18 pursuant to the process identified under
19 subsection (b)(2)(C)(iii)(I).

20 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

21 “(1) FEDERAL BACKSTOP AUTHORITY.—The
22 Administrator shall implement a coal combustion re-
23 siduals permit program for a State if—

24 “(A) the Governor of the State notifies the
25 Administrator under subsection (b)(1) that the

1 State will not adopt and implement a permit
2 program;

3 “(B) the State has received a notice under
4 subsection (d) and the Administrator deter-
5 mines, after providing a 30-day period for no-
6 tice and public comment, that the State has
7 failed, by the deadline identified in the notice
8 under subsection (d)(3)(B), to remedy the defi-
9 ciencies detailed in the notice pursuant to sub-
10 section (d)(3)(A); or

11 “(C) the State informs the Administrator,
12 in writing, that such State will no longer imple-
13 ment such a permit program.

14 “(2) REVIEW.—A State may obtain a review of
15 a determination by the Administrator under this
16 subsection as if the determination was a final regu-
17 lation for purposes of section 7006.

18 “(3) OTHER STRUCTURES.—For structures and
19 inactive coal combustion residuals surface impound-
20 ments located on property within the exterior bound-
21 aries of a State that the State does not have author-
22 ity or jurisdiction to regulate, the Administrator
23 shall implement a coal combustion residuals permit
24 program only for those structures and inactive coal
25 combustion residuals surface impoundments.

1 “(4) REQUIREMENTS.—If the Administrator
2 implements a coal combustion residuals permit pro-
3 gram under paragraph (1) or (3), the permit pro-
4 gram shall consist of the requirements described in
5 subsection (c).

6 “(5) ENFORCEMENT.—

7 “(A) IN GENERAL.—If the Administrator
8 implements a coal combustion residuals permit
9 program for a State under paragraph (1)—

10 “(i) the authorities referred to in sec-
11 tion 4005(c)(2)(A) shall apply with respect
12 to coal combustion residuals, structures,
13 and inactive coal combustion residuals sur-
14 face impoundments for which the Adminis-
15 trator is implementing the coal combustion
16 residuals permit program; and

17 “(ii) the Administrator may use those
18 authorities to inspect, gather information,
19 and enforce the requirements of this sec-
20 tion in the State.

21 “(B) OTHER STRUCTURES.—If the Adminin-
22 istrator implements a coal combustion residuals
23 permit program under paragraph (3)—

24 “(i) the authorities referred to in sec-
25 tion 4005(c)(2)(A) shall apply with respect

1 to coal combustion residuals, structures,
2 and inactive coal combustion residuals sur-
3 face impoundments for which the Adminis-
4 trator is implementing the coal combustion
5 residuals permit program; and

6 “(ii) the Administrator may use those
7 authorities to inspect, gather information,
8 and enforce the requirements of this sec-
9 tion for the structures and inactive coal
10 combustion residuals surface impound-
11 ments for which the Administrator is im-
12 plementing the coal combustion residuals
13 permit program.

14 “(6) PUBLIC PARTICIPATION PROCESS.—If the
15 Administrator implements a coal combustion residu-
16 als permit program under this subsection, the Ad-
17 ministrator shall provide a 30-day period for the
18 public participation process required under sub-
19 section (c)(1)(B)(i).

20 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
21 ADMINISTRATOR.—

22 “(1) STATE CONTROL.—

23 “(A) NEW ADOPTION, OR RESUMPTION OF,
24 AND IMPLEMENTATION BY STATE.—For a State
25 for which the Administrator is implementing a

1 coal combustion residuals permit program
2 under subsection (e)(1)(A) or subsection
3 (e)(1)(C), the State may adopt and implement
4 such a permit program by—

5 “(i) notifying the Administrator that
6 the State will adopt and implement such a
7 permit program;

8 “(ii) not later than 6 months after the
9 date of such notification, submitting to the
10 Administrator a certification under sub-
11 section (b)(2); and

12 “(iii) receiving from the Adminis-
13 trator—

14 “(I) a determination, after the
15 Administrator provides for a 30-day
16 period for notice and public comment,
17 that the State coal combustion residu-
18 als permit program meets the require-
19 ments described in subsection (c); and

20 “(II) a timeline for transition to
21 the State coal combustion residuals
22 permit program.

23 “(B) REMEDYING DEFICIENT PERMIT PRO-
24 GRAM.—For a State for which the Adminis-
25 trator is implementing a coal combustion re-

1 residuals permit program under subsection
2 (e)(1)(B), the State may adopt and implement
3 such a permit program by—

4 “(i) remedying only the deficiencies
5 detailed in the notice pursuant to sub-
6 section (d)(3)(A); and

7 “(ii) receiving from the Adminis-
8 trator—

9 “(I) a determination, after the
10 Administrator provides for a 30-day
11 period for notice and public comment,
12 that the deficiencies detailed in such
13 notice have been remedied; and

14 “(II) a timeline for transition to
15 the State coal combustion residuals
16 permit program.

17 “(2) REVIEW OF DETERMINATION.—

18 “(A) DETERMINATION REQUIRED.—The
19 Administrator shall make a determination
20 under paragraph (1) not later than 90 days
21 after the date on which the State submits a cer-
22 tification under paragraph (1)(A)(ii), or notifies
23 the Administrator that the deficiencies have
24 been remedied pursuant to paragraph (1)(B)(i),
25 as applicable.

1 “(B) REVIEW.—A State may obtain a re-
2 view of a determination by the Administrator
3 under paragraph (1) as if such determination
4 was a final regulation for purposes of section
5 7006.

6 “(g) IMPLEMENTATION DURING TRANSITION.—

7 “(1) EFFECT ON ACTIONS AND ORDERS.—Pro-
8 gram requirements of, and actions taken or orders
9 issued pursuant to, a coal combustion residuals per-
10 mit program shall remain in effect if—

11 “(A) a State takes control of its coal com-
12 bustion residuals permit program from the Ad-
13 ministrator under subsection (f)(1); or

14 “(B) the Administrator takes control of a
15 coal combustion residuals permit program from
16 a State under subsection (e).

17 “(2) CHANGE IN REQUIREMENTS.—Paragraph
18 (1) shall apply to such program requirements, ac-
19 tions, and orders until such time as—

20 “(A) the implementing agency that took
21 control of the coal combustion residuals permit
22 program changes the requirements of the coal
23 combustion residuals permit program with re-
24 spect to the basis for the action or order; or

1 “(B) with respect to an ongoing corrective
2 action, the State or the Administrator, which-
3 ever took the action or issued the order, cer-
4 tifies the completion of the corrective action
5 that is the subject of the action or order.

6 “(3) SINGLE PERMIT PROGRAM.—Except as
7 otherwise provided in this subsection—

8 “(A) if a State adopts and implements a
9 coal combustion residuals permit program
10 under subsection (f), the Administrator shall
11 cease to implement the coal combustion residu-
12 als permit program implemented under sub-
13 section (e) for such State; and

14 “(B) if the Administrator implements a
15 coal combustion residuals permit program for a
16 State under subsection (e)(1), the State shall
17 cease to implement its coal combustion residu-
18 als permit program.

19 “(h) EFFECT ON DETERMINATION UNDER 4005(c)
20 OR 3006.—The Administrator shall not consider the im-
21 plementation of a coal combustion residuals permit pro-
22 gram by the Administrator under subsection (e) in making
23 a determination of approval for a permit program or other
24 system of prior approval and conditions under section

1 4005(c) or of authorization for a program under section
2 3006.

3 “(i) AUTHORITY.—

4 “(1) STATE AUTHORITY.—Nothing in this sec-
5 tion shall preclude or deny any right of any State to
6 adopt or enforce any regulation or requirement re-
7 specting coal combustion residuals that is more
8 stringent or broader in scope than a regulation or
9 requirement under this section.

10 “(2) AUTHORITY OF THE ADMINISTRATOR.—

11 “(A) IN GENERAL.—Except as provided in
12 subsections (d), (e), and (g) of this section and
13 section 6005, the Administrator shall, with re-
14 spect to the regulation of coal combustion re-
15 siduals under this Act, defer to the States pur-
16 suant to this section.

17 “(B) IMMINENT HAZARD.—Nothing in this
18 section shall be construed as affecting the au-
19 thority of the Administrator under section 7003
20 with respect to coal combustion residuals.

21 “(C) ENFORCEMENT ASSISTANCE ONLY
22 UPON REQUEST.—Upon request from the head
23 of a lead State implementing agency, the Ad-
24 ministrator may provide to such State agency
25 only the enforcement assistance requested.

1 “(D) CONCURRENT ENFORCEMENT.—Ex-
2 cept as provided in subparagraph (C) of this
3 paragraph and subsection (g), the Adminis-
4 trator shall not have concurrent enforcement
5 authority when a State is implementing a coal
6 combustion residuals permit program, including
7 during any period of interim operation de-
8 scribed in subsection (c)(3)(D).

9 “(3) CITIZEN SUITS.—Nothing in this section
10 shall be construed to affect the authority of a person
11 to commence a civil action in accordance with sec-
12 tion 7002.

13 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
14 bustion residuals permit program implemented by the Ad-
15 ministrator under subsection (e) shall not apply to the uti-
16 lization, placement, and storage of coal combustion residu-
17 als at surface or underground coal mining and reclamation
18 operations.

19 “(k) USE OF COAL COMBUSTION RESIDUALS.—Use
20 of coal combustion residuals in any of the following ways
21 shall not be considered to be receipt of coal combustion
22 residuals for the purposes of this section:

23 “(1) Use as—

24 “(A) engineered structural fill constructed
25 in accordance with—

1 “(i) ASTM E2277 entitled ‘Standard
2 Guide for Design and Construction of Coal
3 Ash Structural Fills’, including any
4 amendment or revision to that guidance;

5 “(ii) any other published national
6 standard determined appropriate by the
7 implementing agency; or

8 “(iii) a State standard or program re-
9 lating to—

10 “(I) fill operations for coal com-
11 bustion residuals; or

12 “(II) the management of coal
13 combustion residuals for beneficial
14 use; or

15 “(B) engineered structural fill for—

16 “(i) a building site or foundation;

17 “(ii) a base or embankment for a
18 bridge, roadway, runway, or railroad; or

19 “(iii) a dike, levee, berm, or dam that
20 is not part of a structure.

21 “(2) Storage in a manner that is consistent
22 with the management of raw materials, if the coal
23 combustion residuals being stored are intended to be
24 used in a product or as a raw material.

25 “(3) Beneficial use—

1 “(A) that provides a functional benefit;

2 “(B) that is a substitute for the use of a

3 virgin material;

4 “(C) that meets relevant product specifica-

5 tions and regulatory or design standards; and

6 “(D) if such use involves placement on the

7 land of coal combustion residuals in non-road-

8 way applications, in an amount equal to or

9 greater than the amount described in the defini-

10 tion of beneficial use in section 257.53 of title

11 40, Code of Federal Regulations, for which the

12 person using the coal combustion residuals

13 demonstrates, and keeps records showing, that

14 such use does not result in environmental re-

15 leases to groundwater, surface water, soil, or air

16 that—

17 “(i) are greater than those from a

18 material or product that would be used in-

19 stead of the coal combustion residuals; or

20 “(ii) exceed relevant regulatory and

21 health-based benchmarks for human and

22 ecological receptors.

23 “(l) EFFECT OF RULE.—

24 “(1) IN GENERAL.—With respect to the final

25 rule entitled ‘Hazardous and Solid Waste Manage-

1 ment System; Disposal of Coal Combustion Residu-
2 als from Electric Utilities' signed by the Adminis-
3 trator on December 19, 2014—

4 “(A) such rule shall be implemented only
5 through a coal combustion residuals permit pro-
6 gram under this section; and

7 “(B) to the extent that any provision or re-
8 quirement of such rule conflicts, or is incon-
9 sistent, with a provision or requirement of this
10 section, the provision or requirement of this
11 section shall control.

12 “(2) REFERENCES TO THE CODE OF FEDERAL
13 REGULATIONS.—For purposes of this section, any
14 reference to a provision of the Code of Federal Reg-
15 ulations added by the rule described in paragraph
16 (1) shall be considered to be a reference to such pro-
17 vision as it is contained in such rule.

18 “(3) EFFECTIVE DATE.—For purposes of this
19 section, any reference in part 257 of title 40, Code
20 of Federal Regulations, to the effective date con-
21 tained in section 257.51 of such part shall be consid-
22 ered to be a reference to the date of enactment of
23 this section, except that, in the case of any deadline
24 established by such a reference that is in conflict

1 with a deadline established by this section, the dead-
2 line established by this section shall control.

3 “(4) APPLICABILITY OF OTHER REGULA-
4 TIONS.—The application of section 257.52 of title
5 40, Code of Federal Regulations, is not affected by
6 this section.

7 “(5) DEFINITIONS.—The definitions under sec-
8 tion 257.53 of title 40, Code of Federal Regulations,
9 shall apply with respect to any criteria described in
10 subsection (c) the requirements of which are incor-
11 porated into a coal combustion residuals permit pro-
12 gram under this section, except—

13 “(A) as provided in paragraph (1); and
14 “(B) a lead State implementing agency
15 may make changes to such definitions if the
16 lead State implementing agency—

17 “(i) identifies the changes in the ex-
18 planation included with the certification
19 submitted under subsection (b)(2)(C)(iii);
20 and

21 “(ii) provides in such explanation a
22 reasonable basis for the changes.

23 “(6) OTHER CRITERIA.—The criteria described
24 in sections 257.106 and 257.107 of title 40, Code of
25 Federal Regulations, may be incorporated into a coal

1 combustion residuals permit program at the disre-
2 cition of the implementing agency.

3 “(m) DEFINITIONS.—In this section:

4 “(1) COAL COMBUSTION RESIDUALS.—The
5 term ‘coal combustion residuals’ means the following
6 wastes generated by electric utilities and inde-
7 pendent power producers:

8 “(A) The solid wastes listed in section
9 3001(b)(3)(A)(i) that are generated primarily
10 from the combustion of coal, including recover-
11 able materials from such wastes.

12 “(B) Coal combustion wastes that are co-
13 managed with wastes produced in conjunction
14 with the combustion of coal, provided that such
15 wastes are not segregated and disposed of sepa-
16 rately from the coal combustion wastes and
17 comprise a relatively small proportion of the
18 total wastes being disposed in the structure.

19 “(C) Fluidized bed combustion wastes that
20 are generated primarily from the combustion of
21 coal.

22 “(D) Wastes from the co-burning of coal
23 with non-hazardous secondary materials, pro-
24 vided that coal makes up at least 50 percent of
25 the total fuel burned.

1 “(E) Wastes from the co-burning of coal
2 with materials described in subparagraph (A)
3 that are recovered from monofills.

4 “(2) COAL COMBUSTION RESIDUALS PERMIT
5 PROGRAM.—The term ‘coal combustion residuals
6 permit program’ means all of the authorities, activi-
7 ties, and procedures that comprise a system of prior
8 approval and conditions implemented under this sec-
9 tion to regulate the management and disposal of coal
10 combustion residuals.

11 “(3) ELECTRIC UTILITY; INDEPENDENT POWER
12 PRODUCER.—The terms ‘electric utility’ and ‘inde-
13 pendent power producer’ include only electric utili-
14 ties and independent power producers that produce
15 electricity on or after the date of enactment of this
16 section.

17 “(4) EXISTING STRUCTURE.—The term ‘exist-
18 ing structure’ means a structure the construction of
19 which commenced before the date of enactment of
20 this section.

21 “(5) IMPLEMENTING AGENCY.—The term ‘im-
22 plementing agency’ means the agency responsible for
23 implementing a coal combustion residuals permit
24 program, which shall either be the lead State imple-
25 menting agency identified under subsection

1 (b)(2)(C)(i) or the Administrator pursuant to sub-
2 section (e).

3 “(6) INACTIVE COAL COMBUSTION RESIDUALS
4 SURFACE IMPOUNDMENT.—The term ‘inactive coal
5 combustion residuals surface impoundment’ means a
6 surface impoundment, located at an electric utility
7 or independent power producer, that, as of the date
8 of enactment of this section—

9 “(A) does not receive coal combustion re-
10 siduals;

11 “(B) contains coal combustion residuals;
12 and

13 “(C) contains liquid.

14 “(7) STRUCTURE.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the term ‘structure’ means a
17 landfill, surface impoundment, sand or gravel
18 pit, or quarry that receives coal combustion re-
19 siduals on or after the date of enactment of this
20 section.

21 “(B) EXCEPTIONS.—

22 “(i) MUNICIPAL SOLID WASTE LAND-
23 FILLS.—The term ‘structure’ does not in-
24 clude a municipal solid waste landfill.

1 “(ii) DE MINIMIS RECEIPT.—The
2 term ‘structure’ does not include any land-
3 fill or surface impoundment that receives
4 only de minimis quantities of coal combus-
5 tion residuals if the presence of coal com-
6 bustion residuals is incidental to the mate-
7 rial managed in the landfill or surface im-
8 poundment.

9 “(8) UNLINED SURFACE IMPOUNDMENT.—The
10 term ‘unlined surface impoundment’ means a sur-
11 face impoundment that does not have a liner system
12 described in section 257.71 of title 40, Code of Fed-
13 eral Regulations.”.

14 (b) CONFORMING AMENDMENT.—The table of con-
15 tents contained in section 1001 of the Solid Waste Dis-
16 posal Act is amended by inserting after the item relating
17 to section 4010 the following:

“Sec. 4011. Management and disposal of coal combustion residuals.”.

18 **SEC. 3. 2000 REGULATORY DETERMINATION.**

19 Nothing in this Act, or the amendments made by this
20 Act, shall be construed to alter in any manner the Envi-
21 ronmental Protection Agency’s regulatory determination
22 entitled “Notice of Regulatory Determination on Wastes
23 From the Combustion of Fossil Fuels”, published at 65
24 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-
25 bustion wastes addressed in that determination do not

1 warrant regulation under subtitle C of the Solid Waste
2 Disposal Act (42 U.S.C. 6921 et seq.).

3 **SEC. 4. TECHNICAL ASSISTANCE.**

4 Nothing in this Act, or the amendments made by this
5 Act, shall be construed to affect the authority of a State
6 to request, or the Administrator of the Environmental
7 Protection Agency to provide, technical assistance under
8 the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

9 **SEC. 5. FEDERAL POWER ACT.**

10 Nothing in this Act, or the amendments made by this
11 Act, shall be construed to affect the obligations of an
12 owner or operator of a structure (as such term is defined
13 in section 4011 of the Solid Waste Disposal Act, as added
14 by this Act) under section 215(b)(1) of the Federal Power
15 Act (16 U.S.C. 824o(b)(1)).

